

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAUL YAHNE,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF CORRECTIONS *et al.*,

Defendants.

Case No. C04-5661FDB

ORDER

This case has been referred to United States Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the court is a motion for reconsideration which contains a request for counsel. (Dkt. # 20). The motions are **DENIED**.

As defendant's note, "the law is clear that plaintiff cannot sue state agencies in a 42 § 1983 [action]." (Dkt. # 21).

With regard to appointment of counsel; there is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. Wilborn, 789 F.2d at 1331.

Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. Moreover, it appears that this case does not involve exceptional circumstances which warrant appointment of counsel.

1 Accordingly, Plaintiff's Motion to Appoint Counsel is **DENIED**.

2 The clerk is directed to send a copy of this Order to plaintiff and counsel for defendants, to remove
3 docket entries 20 from the courts calendar.

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5 DATED this 8th day of April, 2005.

6 /s/ J. Kelley Arnold
7 J. Kelley Arnold
8 United States Magistrate Judge
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